

*Summary of Commissioner Tristani's Written Testimony
before the Communications Subcommittee
March 25, 1998*

I believe section 271 is sound public policy and is having the effect intended by Congress. That effect is bringing BOCs to the negotiating table. Without the incentive of section 271, I am convinced that local markets would be less open than they are today.

By this past December, however, it was becoming clear that the Commission's application of section 271 was in need of a tuneup. That is why I fully support Chairman Kennard's initiative for the Common Carrier Bureau to discuss the 271 checklist with BOCs and CLECs. I firmly believe those discussions will be beneficial for BOCs, CLECs and the FCC.

But everyone will benefit only if the collaborative process is carried out fairly. To me, there are two fundamental fairness issues involved in the 271 collaborative process. The first is that the collaborative process should not represent a watering down of critical market-opening principles. Second, everything about the 271 process should be above board. This means our 271 decisions must be made on the record before us, not on conversations between Bureau staff and carriers. Having all 271 activity above board also means that the FCC should be able to rely on carriers' assertions in the record. I believe the FCC should consider, as part of the public interest test, whether applicants have certified that they have neither given nor promised any type of benefit to other entities in order to generate support for its application.

I would like to make a couple of brief points about Chairman Kennard's letter to Chairman McCain and Senator Brownback. First, I would emphasize that the old approach wasn't working as well as it should. What the Commission needs to do in rendering 271 decisions is to reach the best interpretation possible and to give these

interpretations on all checklist items in a reasonable timeframe.

Second, I would reiterate Chairman Kennard's point that the 271 checklist items are not a blank slate. Some BOCs seem to say they are in the dark on the meaning of most checklist items. If the Local Competition Order did not exist, I would agree completely. But that Order contains hundreds of pages of binding law on the meaning of 11 of the 14 checklist items.

My final point regarding Chairman Kennard's letter is that the staff guidance provided in that letter is a snapshot of the progress made up to this point. And while I wish the letter could have contained more staff guidance, I recognize that the Bureau has not yet discussed some issues with BOCs and CLECs.